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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91202788
Party	Defendant John M.Van Zandt dba VANZA USA
Correspondence Address	MICHAEL D HARRIS SOCAL IP LAW GROUP LLP 310 N WESTLAKE BLVD , SUITE 120 WESTLAKE VILLAGE, CA 91362 UNITED STATES mharris@socalip.com, mharris@kleinbergler.com
Submission	Motion to Extend
Filer's Name	Michael D. Harris
Filer's e-mail	mharris@socalip.com, alomonaco@socalip.com
Signature	/Michael D. Harris/
Date	09/13/2012
Attachments	Motion to Extend Discovery Cutoff.pdf (44 pages)(1885413 bytes)

**UNITED STATES PATENT AND TRADEMARK OFFICE
TRADEMARK TRIAL AND APPEAL BOARD**

Luster Products, Inc.,

Opposer,

v.

John M. Van Zandt d/b/a/ Vanza USA,

Applicant.

Opposition No. 91/202,788

Ser. No. 77/119,006

Mark: PINKESSENCE

Published August 28, 2007

Motion to Extend Discovery Cutoff

To opposer and its attorney:

Applicant John M. Van Zandt d/b/a/ Vanza USA hereby moves to extend the discovery cutoff two months after the board rules on this motion because of opposer Luster's acts.

Before bringing this motion, counsel for applicant Vanza emailed Luster's attorney Burton Ehrlich requesting that he agree to the relief that this motion seeks. He did not respond.

A. INTRODUCTION

Luster's initial disclosures were due March 9, 2012. Applicant Vanza timely served its initial disclosures, but Luster did not serve the disclosures then. Vanza's attorneys reminded Luster's attorney twice that he failed to serve the initial disclosures. By August, Vanza's attorney rightfully assumed that Luster did not intend to pursue the opposition. However, Vanza's attorney was in the process of filing a motion to compel when on the last date of discovery, Luster served its initial disclosures and a set of discovery requests. Exs. 4, 5 and 6.

Vanza served no written discovery. Without Luster's initial disclosures as a guide, Vanza could not focus its written discovery effectively. Further, Vanza was justified in not serving discovery because fashioning written discovery would be a waste of time if Luster did not intend to prosecute its opposition. That assumption was reasonable in view

of Luster's failure to serve its required initial disclosures even after reminders from Vanza. The additional time is necessary for Vanza to serve discovery and for Luster to respond.

B. FACTS

The board initiated this opposition on November 30, 2011. Vanza answered timely on January 6, 2012. The board set the following deadlines:

Deadline for Discovery Conference 2/8/2012
Discovery Opens 2/8/2012
Initial Disclosures Due 3/9/2012
Expert Disclosures Due 7/7/2012
Discovery Closes 8/6/2012

As part of a letter initiating settlement discussions, Vanza's attorney wrote Luster's attorney on February 3¹ reminding him of his upcoming obligation to serve initial disclosures. See Ex. 1.² Vanza served its initial disclosures timely on March 9, Harris Decl. ¶ 3. Luster served none. *Id.* On March 26, Vanza's attorney wrote Luster's attorney:

On the March 9 due date, we served our client's initial disclosures. We have not received one from your client. Is your client still interested in pursuing this opposition? If so, please provide the disclosures immediately.

Ex. 2.³ On May 17, after Luster still had not provided its disclosures, Vanza's attorney wrote Luster's attorney:

Please let us know if Luster intends to prosecute this trademark opposition. We have not received your client's initial disclosures even though we served ours promptly. We reminded you about the deadline on March 26, but you did not respond.

If you do not respond in the next ten days, we will move the TTAB to dismiss for lack of prosecution.

¹ All dates mentioned are in 2012.

² Attorney Harris's declaration authenticates all exhibits.

³ Until recently, Vanza's attorney did not have Luster's attorney's email address. Therefore, communications were by Postal Service mail.

Ex. 3. Discovery closed August 6. During a telephone call in early August initiated by Vanza's attorney to pursue settlement, Luster's attorney requested a three-month stay of the proceedings. To move settlement ahead without delay, Vanza refused the requested stay.

Luster finally served its initial disclosures on the date discovery closed. Ex. 4. Accompanying the disclosure were interrogatories and document requests. Exs. 5 and 6. Vanza timely responded to the written discovery.

C. ARGUMENT

1. Applicable Law and Rules

This motion relies upon Fed. R. Civ. P. 26(a)(1) and 37.

(A) In General. ... [A] party must, without awaiting a discovery request, provide to the other parties:

(i) the name and, if known, the address and telephone number of each individual likely to have discoverable information – along with the subjects of that information – that the disclosing party may use to support its claims or defenses, unless the use would be solely for impeachment;

(ii) a copy – or a description by category and location – of all documents, electronically stored information, and tangible things that the disclosing party has in its possession, custody, or control and may use to support its claims or defenses, unless the use would be solely for impeachment

...

FED. R. CIV. P. 26(a) (1). 37 C.F.R. § 1.120(e) sets forth the procedure that a party faced with opponent's failure to comply with Rule 26(a)(1). Normally, Vanza should have moved to compel, but, because it appeared that Luster was not prosecuting its opposition, Vanza was justified in not going to the expense and trying to persuade Luster to comply with its obligations.

2. Any Failure to Move to Compel before the Discovery Cutoff is Excusable

Vanza could have moved under 37 C.F.R. § 1.120(e) to compel, but doing so seemed futile because Luster did not seem interested in prosecuting the opposition. Despite Luster's apparent disinterest in the opposition, its attorney did respond by telephone

to a written settlement offer from Vanza's attorney. Thus, it appeared that Luster could avoid prosecuting the opposition through a reasonable settlement.

3. Luster should not Gain a Tactical Advantage by Serving its Initial Disclosures Five Months Late on the Discovery Cutoff Date

Under the rules, Vanza cannot serve written discovery. Because Luster's initial disclosure forces Vanza to serve a discovery request even to obtain the documents listed in the initial disclosure ⁴ If Vanza loses the right to serve discovery requests, Luster's tactic of refusing to serve its initial disclosures for five months after they are due will win. Luster acted as if it did not desire to prosecute its opposition. Then at the last moment, it did what it should have done five months earlier.

Further, Luster's initial disclosures identified broad classes of documents. However, it would provide them only if Vanza requested them under the rules and then only at Luster's headquarters in Chicago or "or at other branch facilities." Ex. 4, p. 5. However, because Luster served its disclosures on the last day for discovery, Vanza's time to inspect them expired.

Vanza was diligent. It did not merely wait for Luster's initial disclosures. Instead, after reminding Luster of the upcoming due date for exchanging the disclosures, it wrote opposing counsel twice after Luster failed to serve its disclosures requesting that Luster comply with the rules. Vanza also was reasonable. Having received no response to inquiries about the initial disclosures caused Vanza to believe that Luster had no interest in the opposition.

Luster's attorney also requested a three-month stay in the proceeding during a telephone conference with Vanza's attorney. Vanza refused because delaying a case rarely moves parties to negotiate diligently unless they are close to a resolution. Many attorneys

⁴ Ex. 4, p. 5 ("If properly and unobjectionably requested pursuant to the Trademark Rules, Opposer will permit inspection and copying of documentary evidence within its custody and control that is not subject to any privilege.")

and party representatives wait until the end of any stay to consider settlement seriously. However, Luster's requested stay also shows that the continuance in the discovery cutoff will not prejudice Luster.

4. Relief Requested

Extending the discovery cutoff two months after the board rules on this motion is fair. It provides Vanza a chance to conduct discovery. In addition, without the extension, Vanza will not even have a chance to see the documents that Luster "may use to support its claims or defenses." FED. R. CIV. P. 26 (a)(1).

D. CONCLUSION

Luster should not be rewarded for a tactic that allows it to delay serving its initial disclosure five months after the due date. After showing no interest in prosecuting its opposition, it also should not be rewarded for serving written discovery on the last day without giving Vanza a chance to propound its own discovery.

Therefore, Vanza requests that the board grant this motion.

September 13, 2012

/Michael Harris/
Michael D. Harris
mharris@socalip.com
SOCAL IP LAW GROUP, LLP
320 N. Westlake Blvd., Suite 120
Westlake Village, CA 91361
Phone: (805) 230-1350 x246 • Fax: (805) 230-1350
Attorney for Applicant John M. Van Zandt d/b/a/
Vanza USA

**DECLARATION OF MICHAEL HARRIS IN SUPPORT OF APPLICANT'S
MOTION TO DISMISS**

I, Michael Harris, declare as follows:

1. I am a member of the State Bar of California. I represent applicant John M. Van Zandt d/b/a/ Vanza USA (Vanza). I make this declaration to authenticate documentary exhibits submitted in support of Vanza's motion to dismiss. Unless stated otherwise, all dates are in 2012. When this declaration identifies an exhibit, a true and correct copy of the exhibit is attached to this declaration.

2. On February 3, I wrote Burton S. Ehrlich, attorney for opposer Luster Products, Inc. (Luster) reminding him of his obligation to serve initial disclosures in the context of the scheduling order. Exhibit 1 is a copy of my February 3 letter.

3. Vanza served its initial disclosures timely on March 9, 2012. Luster did not serve an initial disclosure on me.

4. On March 26, I wrote Luster's attorney to remind him that I had not received Luster's initial disclosures though I had served Vanza's initial disclosures on Luster. Exhibit 2 is a copy of that letter.

5. Exhibit 3 is a copy of my May 17 letter to Luster's attorney in which I told opposing counsel again that I had not received initial disclosures even though they were due on March 9. I also asked him if Luster intended to prosecute this trademark opposition. If not, I would seek dismissal. He did not respond.

6. In view of Luster's attorney ignoring my requests that his client comply with the rules, I assumed that Luster had lost interest in the opposition.

7. In late July or early August, I had a telephone conversation with Luster's attorney about settlement. During that call, Luster's attorney asked me if Vanza would agree to a three-month stay of the opposition. I declined and explained that a three-month delay would not advance settlement.

8. Exhibit 4 is a copy of Luster's initial disclosures, which were served on August 6, the date for the close of discovery.

9. Exhibits 5 and 6 are copies of Luster's written discovery to Vanza. I received them on August 6.

I declare under penalty of perjury under the laws of the United States of America that the facts stated in this declaration are true and correct.

Executed on September 13, 2012


Michael D. Harris

CERTIFICATE OF SERVICE

I hereby certify that on September 13, 2012, I am transmitting a copy of "Motion to Extend Discovery Cutoff and Declaration of Michael Harris" by email and first class mail to:

Burton S. Ehrlich, Esq.
Ladas & Parry
224 South Michigan Ave., Suite 1600
Chicago, IL 60604
Email Address: burte@ladas.net.

Mr. Ehrlich agreed to mutual service by email.

September 13, 2012

/Anneliese G. Lomonaco/
Anneliese G. Lomonaco

Exhibit 1

SoCal IP

Law Group LLP

310 N. Westlake Blvd., Suite 120
Westlake Village, California 91362
Direct Phone +1 (805) 497-3488
Office Phone +1 (805) 230-1350 x246
fax +1 (805) 230-1355
mharris@socalip.com

February 3, 2012

Burton S. Ehrlich, Esq.
Ladas & Parry
224 S. Michigan Ave., Suite 1600
Chicago, IL 60604

Re: Luster Products v. Van Zandt
Trademark Opposition
PINKESSENCE

FED. R. EVID. 408 Settlement Discussion
By Fax Only: (312) 427-6668

Subject: Proposed Resolution

Dear Mr. Ehrlich:

You have not responded to our January 5 letter.

First, I asked you to provide us an email address for you. It is so much quicker than relying on the Postal Service. Please let us know your address.

Second, The TTAB's scheduling order set the following upcoming dates between now and September 1.

Time to Answer	1/9/2012
Deadline for Discovery Conference	2/8/2012
Discovery Opens	2/8/2012
Initial Disclosures Due	3/9/2012
Expert Disclosures Due	7/7/2012
Discovery Closes	8/6/2012
Plaintiff's Pretrial Disclosures	9/20/2012

Two of the deadlines are next week We assumed that you as plaintiff's attorney would have asked before now to schedule the discovery conference.

Third, we made a settlement offer but did not receive a response. Please contact me if Luster is interested.

Sincerely,

SOCAL IP LAW GROUP LLP



Michael D. Harris

Exhibit 2



310 N. Westlake Blvd., Suite 120
Westlake Village, California 91362
Direct Phone +1 (805) 497-3488
Office Phone +1 (805) 230-1350 x246
fax +1 (805) 230-1355
mharris@socalip.com

March 26, 2012

Burton S. Ehrlich, Esq.
Ladas & Parry
224 S. Michigan Ave., Suite 1600
Chicago, IL 60604

FED. R. EVID. 408 Settlement Discussion
BY FAX ONLY: (312) 427-6668

Re: Luster Products v. Van Zandt
Trademark Opposition – PINKESSENCE

Subject: Initial Disclosures

Dear Burt:

On the March 9 due date, we served our client's initial disclosures. We have not received one from your client. Is your client still interested in pursuing this opposition? If so, please provide the disclosures immediately.

Early in this opposition, we made a settlement offer but received no response. If PINKESSENCE remains a concern for Luster, our client is willing to consider a reasonable settlement.

Last, during our only conversation, you told me your email address. I failed to add it to Outlook. Please provide it again.

Sincerely,

SoCAL IP LAW GROUP LLP

/Michael D. Harris/

Michael D. Harris

cc: Jack Van Zandt

Anneliese Lomonaco

From: Amanda Jones [ajones@socalip.com]
Sent: Monday, March 26, 2012 10:48 AM
To: Elisha Manzur; Anneliese Lomonaco; Nicole Abeloe
Subject: FW: Your fax has been successfully sent to Burton S Ehrlich at 312-427-6668.

From: MetroFax[SMTP:FAXBOUNCE@FAX.METROHISPEED.COM]
Sent: Monday, March 26, 2012 10:44:49 AM
To: Amanda Jones
Subject: Your fax has been successfully sent to Burton S Ehrlich at 312-427-6668.
Auto forwarded by a Rule



From: ajones@socalip.com

To Name: **Burton S Ehrlich**

To Number: **312-427-6668**

Subject:

Attempt 1:

Date/Time: **3-26-2012 10:44:13 AM (GMT-07:00)**

Pages: **1**

Transmission Time: **00:18**

Reason: **Successful Send**

Thank you for using MetroFax®. If you have any questions,
please contact support@metrofax.com.

Exhibit 3



310 N. Westlake Blvd., Suite 120
Westlake Village, California 91362
Direct Phone +1 (805) 497-3488
Office Phone +1 (805) 230-1350 x246
fax +1 (805) 230-1355
mharris@socalip.com

May 17, 2012

Burton S. Ehrlich, Esq.
Ladas & Parry
224 S. Michigan Ave., Suite 1600
Chicago, IL 60604

FED. R. EVID. 408 Settlement Discussion
BY FAX ONLY: (312) 427-6668

Re: Luster Products v. Van Zandt
Trademark Opposition – PINKESSENCE

Subject: Initial Disclosures

Dear Burt:

Please let us know if Luster intends to prosecute this trademark opposition. We have not received your client's initial disclosures even though we served ours promptly. We reminded you about the deadline on March 26, but you did not respond.

If you do not respond in the next ten days, we will move the TTAB to dismiss for lack of prosecution.

Sincerely,

SoCAL IP LAW GROUP LLP

/Michael D. Harris/

Michael D. Harris

cc: Jack Van Zandt

Exhibit 4

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

IN THE MATTER OF APPLICATION SERIAL NO. 77/119,006
PUBLISHED IN THE OFFICIAL GAZETTE ON AUGUST 28, 2007

LUSTER PRODUCTS, INC.,)	Opposition No.: 91202788
)	
Opposer,)	
v.)	
)	
JOHN M.VAN ZANDT)	
d/b/a VANZA USA)	
)	
Applicant.)	

OPPOSER'S INITIAL DISCLOSURES

Luster Products, Inc. ("Opposer"), through its counsel, hereby provides the following initial disclosures pursuant to Trademark Rule 2.120(a) and FRCP 26(a)(1).

INTRODUCTORY STATEMENT

The following disclosures are made based on the information reasonably available to Opposer as of this date. By making these disclosures, Opposer does not represent that they are identifying every document, tangible thing, or witness possibly relevant to this Opposition. Nor has Opposer waived its right to object to production of any document or tangible thing disclosed herein on the basis of privilege, the work product doctrine, relevancy, undue burden or any other valid objection. Rather, Opposer's disclosures represent a good faith effort to identify information it reasonably believes may support Opposer's claims or defenses

as required by Rule 26(a)(1).

Further, Opposer notes that other persons who are not associated with Opposer may have relevant information. Opposer is not purporting in the following disclosures to make disclosures on behalf of, or based on the information available to, all such persons.

Additionally, Opposer does not represent that they have identified every witness, document or thing they may use to support their claims and reserve the right to supplement this initial disclosure to provide other information, witnesses, documents and tangible things that become known to Opposer through discovery, further case investigation, after disclosure of Applicant's specific contentions, or otherwise.

Finally, Opposer's disclosures are made without in any way waiving: (1) the right to object to the use of any such information on the grounds of competency, privilege, relevancy and materiality, hearsay, or any other ground, for any purpose, in whole or in part, in this action or any other action; and (2) the right to object on any and all grounds, at any time, to any other discovery request or proceeding involving or relating to the subject matter of these disclosures.

Opposer provides these disclosures subject to such objections and qualifications.

A. Individuals Likely to Have Discoverable Information

The following individuals are likely to have discoverable information that Opposer may use to support its claims or defenses and is limited to those persons Opposer are specifically aware of at the present time:

The following persons would have information and knowledge pertaining to the marketing, sales, advertising and promotion of Opposer's PINK brands identified in the Opposition Petition: Jory Luster, the President of Luster Products, with other employees in the marketing and sales departments having more individualized information in their areas of involvement. Ms. Sonia Luster, Vice President and Director of Information Technology would have information pertaining to financial and information technology matters pertaining to the PINK brands identified in the Opposition Petition. Mr. Freddie Luster II, Vice President and Director of R&D would have information on product development and technical aspects of products introduced under the PINK brands identified in the Opposition Petition.

The above witnesses are employees of Opposer and available through Opposer's counsel. All the employees are based at Opposer's corporate offices located at 1104 West 43rd Street, Chicago, Illinois 60609.

Applicant or his employees also would seemingly have particularized information pertaining to Applicant's use, advertising, marketing and sales of the trademark herein opposed.

Applicant's potential employees, officers or agents may have

knowledge of the allegations set forth in Applicant's Answer to the Opposition Petition.

In addition to those individuals specifically identified above, Opposer also incorporates the names of other employees of Opposer found in documents that may be produced in this action, who may have discoverable information related to the subject matter set forth in those documents. Opposer expressly preserves all privileges and immunities relating to potential testimony for any witness.

Opposer reserves the right to name additional witnesses, including both fact and expert witnesses that may be identified through discovery.

B. Documents in Opposer's Possession, Custody or Control

1. Documents concerning the use, advertising, marketing and sales under the Opposer's marks identified in the Opposition Petition.

2. Documents concerning the trademark registrations identified in the Opposition Petition with the United States Patent and Trademark Office.

3. Other documents that may be discovered through the discovery process that relate to the allegations set forth in Opposer's Opposition Petition.

4. Potential documents concerning Applicant's potential use, advertising, marketing and sales under the Applicant's mark would be potentially provided or available by Applicant.

Documents from Opposer would be based at Opposer's main corporate offices located at 1104 West 43rd Street, Chicago, Illinois 60609 or at other branch facilities of Opposer.

If properly and unobjectionably requested pursuant to the Trademark Rules, Opposer will permit inspection and copying of documentary evidence within its custody and control that is not subject to any privilege. To the extent Opposer has documents that are confidential, highly confidential, or constitute trade secret/commercially sensitive material, Opposer will permit inspection and copying of these documents pursuant to the protective order entered in this action.

Respectfully submitted,

By:


One of Opposer's attorneys

Burton S. Ehrlich
Ladas & Parry LLP
224 S. Michigan Avenue
Suite 1600
Chicago, IL 60604
(312) 427-1300

CERTIFICATE OF SERVICE

The undersigned, one of Opposer's attorneys, hereby certifies that on August 6, 2012, he caused a true and correct copies of the foregoing OPPOSER'S INITIAL DISCLOSURES to be served upon Applicant via First Class mail, postage pre-paid, at the following address:

Michael D. Harris
SOCAL IP LAW GROUP, LLP
320 N. Westlake Blvd.
Suite 120
Westlake Village, CA 91361



One of Opposer's attorneys

Exhibit 5

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

IN THE MATTER OF APPLICATION SERIAL NO. 77/119,006
PUBLISHED IN THE OFFICIAL GAZETTE ON AUGUST 28, 2007

LUSTER PRODUCTS, INC.,)	Opposition No.: 91202788
)	
Opposer,)	
v.)	
)	
JOHN M.VAN ZANDT)	
d/b/a VANZA USA)	
)	
Applicant.)	

OPPOSER'S FIRST SET
OF INTERROGATORIES TO APPLICANT

I. INSTRUCTIONS AND DEFINITIONS

A. These interrogatories seek answers as of the date they are answered. Applicant should supply any additional information relating in any way to these interrogatories which Applicant acquires or which becomes known to the Applicant up to and including the time of trial promptly after such information is acquired or becomes known.

B. Reference to the term "Opposer" refers to Luster Products, Inc., it's employees and agents, and all other persons acting on their behalf or under their direction or control, including their representatives or any person acting on their behalf, or the officers, directors, agents, employees, attorneys, sales representatives, or any person acting on behalf of any merged, consolidated or acquired predecessor, and the requested

Interrogatories shall be answered in conformance with such construction.

C. Reference to the term "Applicant" shall be construed as referring to the Applicant John M. Van Zandt, his employees, agents, associated partnerships, or related corporations, and any and all other persons acting on their behalf or under their direction or control, including their representatives or any person acting on their behalf, or the officers, directors, agents, employees, attorneys, sales representatives, or any person acting on behalf of any merged, consolidated or acquired predecessor in interest, and the requested Interrogatories shall be answered in conformance with such construction.

D. In all Interrogatories requesting identification of documents and things, Applicant should state whether they will make such document or thing available to Opposer for inspection and copying by stating "available"; if Applicant is unwilling or unable to produce such document or thing for inspection and copying, Applicant should so indicate by stating "not available" and giving all reasons therefor.

E. The term "document" as used herein utilizes the full meaning of that term as defined in the Federal Rules of Civil Procedure Rule 34 and includes all original writings and all non-identical copies and, without limitations, minutes, correspondence, memoranda, agreements, licenses, sketches, diagrams, schematics, handwritten or stenographic notes,

periodicals or other publications, purchase orders, sales invoices, bills of sales, advertising or sales literature, pamphlets, reports, records, studies, service manuals, operator manuals, instruction sheets, log sheets, data sheets, diaries, drawings, blueprints, photographs, charts, papers, graphs, indexes, labels, tapes, computer printouts and other materials which are written, printed, typewritten, reproduced or recorded, and from which information can be obtained. Where originals or non-identical copies are not available, "document" also means copies of such originals or non-identical copies.

F. The terms "specify," "identify" or "give the identification of" with respect to a document or thing is defined to mean a demand for a detailed description of each specific item identification of which is requested, whether or not it may be privileged or subject to an immunity and whether or not it is in Applicant's possession, custody or control, by setting forth:

(a) a description of its type and nature, (b) its date, (c) the present location and custodian for the original and all copies, (d) the names of the writer and recipients of the original and all copies and (e) the title or subject matter. For any individual named as a writer or a recipient of such an item, the individual's full name and address should be stated, together with his present or last position and business affiliation; for any firm or corporation named, its full address should be stated, together with the name, address, and title of the official

responsible for preparing or having custody of any such item. A copy of a document may be provided in lieu of identification to the extent the information called for is clearly available from the face of the copy.

G. The term "identify" or "give the identification of" with respect to a person is defined to mean a demand for the full name, resident address, present business affiliation, and job title and description of job responsibilities of such person, together with a statement as to his relationship with Applicant, if any, and if not presently related, a statement as to whether any such relationship ever existed and the inclusive dates thereof.

H. In the event Applicant asserts that any document or thing the identity of which is requested is privileged or subject to immunity, Applicant is requested to so state when identifying the document or thing, and to state with respect to the asserted claim the following information:

(a) The date, identity, and general subject matter of each document in detail sufficient to understand the nature of the document;

(b) The grounds asserted in support of the failure to produce the document;

(c) The identity of each person (other than stenographic or clerical assistants) participating in the preparation of the document;

(d) The identity of each person to whom the contents of the document were communicated by copy, distribution, reading , or substantial summarization;

(e) A description of any document or other material transmitted with or attached to the document;

(f) The number of pages in the document;

(g) The particular Interrogatory or Request to produce to which the document is responsive; and

(h) Whether any business or non-legal matter is contained or discussed in the document.

I. The terms "trademark" or "mark" as used in these interrogatories shall include trademarks, service marks, trade names, or any word or symbol utilized in connection with business activities.

J. Any reference to the mark PINKESSENCE will include the mark shown in the application under opposition and any other similar marks, terms or designations used by the Applicant which include the mark, term or designation PINK, and will also include any other marks, terms or designations used by the Applicant which include as part of the mark, term or designation the word PINK.

INTERROGATORIES

INTERROGATORY NO. 1

Identify any other business entity(ies) which fully or partly owns or controls Applicant's business and identify any

other business entity(ies) which is fully or partly owned by Applicant.

INTERROGATORY NO. 2

Identify each person who had any responsibility with regard to the choice of the Applicant's mark PINKESSENCE or have any responsibility with regard to the marketing, promotion, advertising and sale or intended sale of products or services bearing or associated with the Applicant's mark PINKESSENCE.

INTERROGATORY NO. 3

If Applicant, or anyone on its behalf, conducted a search or investigation of any records such as, but not limited to, United States Patent and Trademark Office records, state or foreign country trademark records, trademark or trade publications, catalogs, sales literature, advertisements, business directories, computer data bases or the records of any trademark service organization with regard to the Applicant's mark PINKESSENCE and, if so for each such search or investigation, identify the marks which were searched or investigated, and state:

A. The date or dates the search or investigation was made and the person by whom it was made;

B. The identity of all marks and other materials located in each search; and

C. Identify all documents relating to such searches or investigations regarding the marks.

INTERROGATORY NO. 4

With respect to the selection or adoption of the Applicant's mark PINKESSENCE:

A. Identify all persons who participated in Applicant's selection and adoption of Applicant's mark PINKESSENCE, specifically identifying the person or persons who made the final decision on behalf of Applicant to adopt or select the mark PINKESSENCE and the person or persons who first suggested the use by Applicant.

B. Describe in detail the circumstances involved and the specific reason for the adoption or selection of the Applicant's mark PINKESSENCE.

C. Identify all documents referring or relating to the selection, adoption or proposed use of, and the decision to use or attempts to register Applicant's mark PINKESSENCE.

INTERROGATORY NO. 5

If Applicant claims to be the successor in interest to any other person, firm or corporation which used the Applicant's mark PINKESSENCE, identify each transaction and all documents by which it is claimed that rights to the Applicant's mark PINKESSENCE have passed to Applicant.

INTERROGATORY NO. 6

Identify all written or oral reports, opinions, recommendations or other communications made at any time which relate in any way to the Applicant's denials of the Opposer's allegations of a likelihood of confusion between the Applicant's mark PINKESSENCE and the Opposer's marks as identified in the Opposition Petition.

INTERROGATORY NO. 7

With respect to any products or services sold or intended for sale using the Applicant's mark PINKESSENCE:

A. Describe the channels of trade by which Applicant's goods or services are sold or intended for sale under the mark PINKESSENCE to reach the ultimate user of such goods;

B. Describe in detail the goods or services and the specific intended purposes of the goods and services that are or have been offered or are intended to be offered by Applicant under the Applicant's mark PINKESSENCE.

C. Set forth by type of products or services the items which have been sold or are intended for sale and the approximate retail price for each type of product or service sold or intended for sale under the mark PINKESSENCE;

D. Set forth the volume of sales by year of each product by item or type of product or service sold under the mark PINKESSENCE;

E. Set forth the dollar sales by year for each item or type of product or service sold under the mark PINKESSENCE.

INTERROGATORY NO. 8

State whether Applicant has ever published or printed, or caused to be published or printed, any printed promotional or advertising materials or documents referring or relating to Applicant's mark PINKESSENCE or products or services sold under the mark PINKESSENCE, including but not limited to press releases, publicity releases, trade releases, new product releases, other notices to the trade, catalogs, catalog sheets, sales literature, reprints, advertising or other printed matter and if so, identify representative samples or services of each such item, the time period used and the amount spent on each such item.

INTERROGATORY NO. 9

If Applicant has ever been a party to any litigation, opposition, cancellation or other dispute involving any mark, term or designation for the mark PINKESSENCE, describe the initiation, prosecution and ultimate disposition of each such dispute.

INTERROGATORY NO. 10

Identify all documents and things that Applicant intends to introduce into evidence or rely upon in these proceedings, or that may be introduced into evidence or relied upon on Applicant's behalf.

INTERROGATORY NO. 11

Identify all documents and describe each fact which refers or relates to Applicant's basis for its factual or legal contentions and denials which are set forth in the APPLICANT'S ANSWER to the OPPOSITION PETITION OF THE OPPOSER, including the denials of the factual matters set forth in Paragraph No.'s 6 and 9 in the OPPOSITION PETITION.

INTERROGATORY NO. 12

Describe the circumstances under which Applicant first learned of Opposer and of Opposer's marks PINK, PINK PROTECTION, PINK PLUS, and PINK SMOOTH TOUCH or any marks of Opposer which include as part of the mark the word PINK.

INTERROGATORY NO. 13

Identify all persons who have or may have been confused by the simultaneous use of any of Opposer's marks and Applicant's

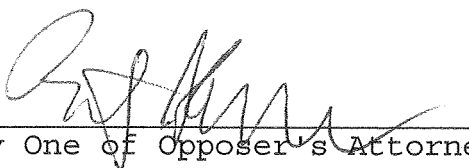
mark PINKESSENCE and describe the circumstances of any such instances of confusion.

INTERROGATORY NO. 14

Identify each person Applicant intends to call as a witness during the testimony periods in this Opposition, and for each witness identify the substance of the testimony Applicant expects to elicit from that witness.

INTERROGATORY NO. 15

Identify every person who prepared, assisted in the preparation of, or provided information for the answers to these Interrogatories.



By One of Opposer's Attorneys

Burton S. Ehrlich
Ladas & Parry LLP
224 South Michigan Avenue
Suite 1600
Chicago, Illinois 60604
(312) 427-1300

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing OPPOSER'S FIRST SET OF INTERROGATORIES TO APPLICANT was served via first class mail upon counsel for Applicant, by depositing same with the United States Postal Service, first class mail, postage prepaid, on August 6, 2012 in an envelope addressed to:

Michael D. Harris
SOCAL IP LAW GROUP, LLP
320 N. Westlake Blvd.
Suite 120
Westlake Village, CA 91361



By One Of Opposer's Attorneys

Exhibit 6

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

IN THE MATTER OF APPLICATION SERIAL NO. 77/119,006
PUBLISHED IN THE OFFICIAL GAZETTE ON AUGUST 28, 2007

LUSTER PRODUCTS, INC.,)	Opposition No.: 91202788
)	
Opposer,)	
v.)	
)	
JOHN M.VAN ZANDT)	
d/b/a VANZA USA)	
)	
Applicant.)	

**OPPOSER'S FIRST REQUEST FOR
PRODUCTION OF DOCUMENTS AND THINGS**

Opposer pursuant to Rule 34 of the Federal Rules of Civil Procedure, requests Applicant to produce within thirty (30) days from the date of service hereof at the offices of Ladas & Parry LLP, 224 South Michigan Avenue, Suite 1600, Chicago, IL 60604, or at another mutually agreeable location, and permit Opposer, or someone acting on its behalf, to inspect and copy such of the following designated documents as are in Applicant's possession, custody or control.

DEFINITIONS

Opposer adopts the Definitions provided in OPPOSER'S FIRST SET OF INTERROGATORIES TO APPLICANT by reference, as if fully set forth herein.

Applicant has been requested to produce the following documents and things:

1. Representative documents showing all goods or services on which the Applicant's mark PINKESSENCE is used or has been used.
2. Documents and things sufficient to determine Applicant's corporate or partnership structure, if any, for the Applicant's business.
3. Documents and things sufficient to determine each of Applicant's principal places of business.
4. Documents and things sufficient to determine the principal places of business of each parent, subsidiary or affiliate of Applicant's business.
5. All documents and things that relate to any trademark searches performed in connection with Applicant's selection or use of Applicant's mark PINKESSENCE.
6. All documents and things that relate to any marks considered in connection with Applicant's selection of Applicant's mark PINKESSENCE.
7. All documents and things that relate to opinions as to the availability of Applicant's mark PINKESSENCE for use as a trademark in connection with Applicant's goods or services.
8. All documents and things relating to searches for Applicant's mark PINKESSENCE considered for use in connection with each of Applicant's goods or services.
9. All documents and things relating to the selection or adoption of Applicant's mark PINKESSENCE.

10. All documents and things relating to the first use of Applicant's mark PINKESSENCE in connection with Applicant's goods or services.

11. All documents and things that relate to any state or national application to register any trademark, service mark or trade name that includes Applicant's mark PINKESSENCE or any similar mark, including, but not limited to all File Wrappers and Contents pertaining to any applications.

12. All documents and things that relate to any contacts by the Applicant with the United States Patent and Trademark Office relating to Opposer's marks or to Applicant's mark PINKESSENCE or any of Applicant's applications to register Applicant's mark PINKESSENCE or any similar marks.

13. A sample of each different product bearing Applicant's mark PINKESSENCE that is or has been advertised, offered for sale, sold or distributed by Applicant or mock-up packaging or advertising for any products or services for which the Applicant has an intent to use the mark PINKESSENCE in connection with any such goods or services.

14. Representative specimens of each label, tag, placard, insert, stamp, packaging material, and the like, on which Applicant's mark PINKESSENCE is, or at any time has been used or is intended for such use.

15. A sample of each of Applicant's goods or brochures illustrating any services which is or will be associated with the use of the mark PINKESSENCE.

16. Representative specimens of catalogs, mailing pieces, brochures, handbills, flyers, franchise offerings, and other pieces of descriptive or promotional literature, directed at potential (or actual) customers, and relating to or describing products or services identified by, or associated with the Applicant's mark PINKESSENCE.

17. All documents and things relating to the use of Applicant's mark PINKESSENCE during the first three months of such use.

18. All documents and things that indicate in what geographic areas Applicant's mark PINKESSENCE has been offered, advertised, or sold in connection with Applicant's goods or services.

19. All documents and things that relate to any investigation, market survey or other research regarding the use of Applicant's mark PINKESSENCE in connection with the sale of Applicant's goods or services.

20. All formal or informal surveys or polls, studies, research or tests and all documents relating to such surveys, polls, studies, research, or tests which were conducted by or on behalf of Applicant relating to the Applicant's mark PINKESSENCE or to Opposer's mark PINK and Opposer's other marks which incorporate the word mark PINK.

21. All documents which refer to or relate to Opposer.

22. All license agreements or other agreements relating to use of the Applicant's mark PINKESSENCE.

23. Specimens showing the current use of the Applicant's mark PINKESSENCE for each product identified in any application.

24. Specimens of all advertising documents and promotional materials, including, but not limited to, catalogs, circulars, leaflets, direct mail pieces, newspaper and magazine advertisements, ad slicks, sale presentation materials, publicity releases and telephone book advertisements bearing the Applicant's mark PINKESSENCE.

25. All documents including, but not limited to, records, memoranda, and correspondence pertaining to the creation, selection, searching, adoption, and earliest use of the Applicant's mark PINKESSENCE or by any person acting or purporting to act for or on behalf of Applicant, including all correspondence with design firms, advertising agencies, advertising media and suppliers.

26. All documents including, but not limited to, records, memoranda, and correspondence relating to statements, inquiries, comments or other communications by or from Applicant's customers, suppliers or other third parties, either written or oral, evidencing any confusion, suspicion, belief or doubt on the part of such customer, supplier or other third party, or lack thereof, as to the relationship between the mark PINKESSENCE of the Applicant and any marks of the Opposer.

27. All documents including, but not limited to, records, memoranda, correspondence, and notes relating to Applicant's knowledge of Opposer's use, advertising or Federal Trademark

Registrations or Applications for the Opposer's marks as identified in the Opposition Petition.

28. All documents describing or illustrating the organization and structure of Applicant's business, at present or during the past five years including, but not limited to, organizational charts, job descriptions, and maps and locations of sales offices or distribution centers or manufacturing facilities.

29. Documents describing or illustrating the past or present lines of distribution for any product manufactured, sold or intended for sale or distribution by Applicant or by any person acting or purporting to act for or on behalf of Applicant, bearing or intended to be bearing Applicant's mark PINKESSENCE.

30. All documents relating to any period reports on market conditions, including market share data, for any products or services associated with, or bearing the Applicant's mark PINKESSENCE.

31. All documents referring or relating to the Applicant's mark PINKESSENCE showing Applicant's codes or numbering systems for identifying Applicant's products or services from sales documents, invoices and periodic sales reports.

32. All documents which refer or relate to the volume of goods or services sold on a monthly basis in both unit sales and dollar volume for each product or service and each type of product or service offered for sale bearing the Applicant's mark PINKESSENCE.

33. Documents sufficient to identify the aggregate unit and aggregate dollar sales of products and services sold by Applicant under the Applicant's mark PINKESSENCE.

34. All documents and things that relate to advertising or promoting or intended promoting of products or services which refer or relate to Applicant's mark PINKESSENCE.

35. All documents and things relating to the types of customers that buy, receive or use Applicant's goods or services sold under the mark PINKESSENCE.

36. All documents and things relating to any discontinuance of use of the Applicant's mark PINKESSENCE on or in connection with any goods or services.

37. All documents and things relating to a likelihood of confusion of the Applicant's mark PINKESSENCE with any other mark.

38. All documents and things relating to any mail, telephone calls, complaints, inquiries or orders regarding Opposer or Opposer's marks, goods, services or business activities of Opposer.

39. All documents and things relating to any communications intended for Opposer.

40. All documents and things relating to any communications where the communicator believed that Opposer or Opposer's marks, goods and services were in some way connected with Applicant's marks, goods or the business of the Applicant.

41. All documents and things that relate to any deliberation by Applicant as to whether Applicant's mark

PINKESSENCE should be modified or whether the use of Applicant's mark should be discontinued, reduced or expanded.

42. All documents and things that relate to Applicant's first awareness of Opposer's mark PINK and Opposer's other marks which incorporate the word mark PINK.

43. All documents and things that relate to Applicant's first awareness of Opposer.

44. All documents and things reflecting any confusion between Applicant's goods and services and Opposer's goods and services.

45. All documents and things that relate to any conflict between the adoption or use, or registration of Applicant's mark PINKESSENCE and the marks of any other persons.

46. All documents and things referring or relating to any litigation, opposition, cancellation, or other dispute involving Applicant's mark PINKESSENCE.

47. All documents and things that refer or relate to Applicant's advertising expenditures for goods or services in connection with Applicant's mark PINKESSENCE, from the date of first use of Applicant's marks to the present.

48. All documents and things that relate to articles or publications which refer or relate to the mark PINKESSENCE or the goods or services sold under that mark.

49. All documents and things upon which Applicant intends to rely or place in evidence during the testimony periods of this proceeding.

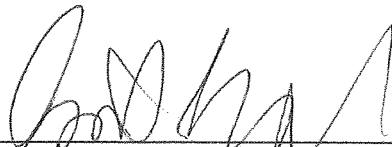
50. All correspondence between Applicant and any third-party concerning or mentioning Opposer.

51. All correspondence between Applicant and any third-party concerning Opposer's marks.

52. All documents not previously produced, but identified in response to OPPOSER'S FIRST SET OF INTERROGATORIES TO APPLICANT or referred to for purposes of preparing a response to those Interrogatories.

53. All documents and things which refer or relate to any licensing or prospective licensing of the trademark PINKESSENCE by the Applicant.

54. All documents and things which support, refer or relate to any denials of the Applicant in its ANSWER to the OPPOSITION PETITION in these proceedings.


By One of Opposer's Attorneys

Burton S. Ehrlich
Ladas & Parry LLP
224 South Michigan Avenue
Suite 1600
Chicago, Illinois 60604
(312) 427-1300

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing OPPOSER'S FIRST REQUEST FOR PRODUCTION OF DOCUMENTS AND THINGS was served via first class mail upon counsel for Applicant, by depositing same with the United States Postal Service, first class mail, postage prepaid, on August 6, 2012 in an envelope addressed to:

Michael D. Harris
SOCAL IP LAW GROUP, LLP
320 N. Westlake Blvd.
Suite 120
Westlake Village, CA 91361


By One Of Opposer's Attorneys